

Annex AG1

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Received

JAN. 05, 2007

LAW FIRM  
**ERDMANN ZACHARIAS-LANGHANS**

[illegible stamp]

Date: 01/03/2007  
**Our File: SZ-06/02599 n-mz**  
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**Facebook, Inc. ./ StudiVZ Ltd.**  
**Your File: SVZ-002/2006**

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Dear Mr. Erdmann,

We are informing you that Facebook, Inc. has commissioned us with the safeguarding of its interests in this matter. We are forwarding an original power of attorney in our name in the annex. The correspondence between the parties, in particular the letter from our client from 06/8/2006 and your reply from 06/21/2006, have been presented to us.

In the meantime new developments have arisen. In particular, our client has established that in fact many users, based on the nearly identical design, have the erroneous perception that your client's website is run by our client or at least operated with its approval. Your client will surely be able to understand that our

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client must proceed against this misrepresentation of origin in order to prevent that the users conclude a mutual origin and attribute your client's website to our client. Therefore, our client requests that your client change the design of the website in such a manner that no likelihood of confusion exists whatsoever. In detail:

#### **I. Factual Confusion**

We are only referring to the following annexes as examples. As your client knows as well from numerous magazine articles and Internet commentaries, there is a variety of evidence that the users conclude a mutual origin after your client has made a nearly identical copy of our client's design for the website.

Independent sources, such as for example WIKIPEDIA, reference the similarity of the websites. As **Annex 1** we are forwarding the WIKIPEDIA printout regarding Facebook, in which it is noted that the Internet platform StudiVerzeichnis exists in German-speaking countries, which is not only based strongly on the Facebook concept **"but even graphically looks like a copy of Facebook."** In the depiction of your client in WIKIPEDIA, your client's website is described as **"the German-speaking clone"** of our client's website.

Based on the high degree of similarity of the website design, there were and are many actual cases of confusion. As an example we are forwarding as **Annex 2** an e-mail from user Dominik Kopp dated 06/30/2006, who asks whether "StudiVZ.com is the official version of your great website, as it is exactly like yours." The similarities and the resultant false perception that our client was behind the website of your client are the subject of numerous contributions and commentaries in Internet forums. As an example we are forwarding as **Annex 3** a comparison of the design of the websites, and the commentator comes to the conclusion that the design and the whole layout are nearly identical. As **Annex 4** we are forwarding further commentaries from Internet users who occupy themselves with the design identity and the structural similarities of the websites. The users also arrive at the result that your client's website constitutes an obvious copy of our client's website, and ironically your client's website is described as "Fakebook."

At that, most recently your client was harshly criticized in numerous press releases based on problems with data protection, complaints in conjunction with the contacting of female members and in conjunction with the appearance of an invitation for a party in the style of the Nazi publication "Völkischer Beobachter." Our client does not wish to comment further on these problems. However, your client will surely understand that our client has to ensure that your client's website is not attributed to our client's enterprise in light of the actually arisen deception and in light of the reputation of your client and the mentioned press releases.

## **II. Claims**

Your client is obliged to cease and desist the utilization of the current design under several legal aspects:

### **1. Trademark Claims**

Our client has applied for and obtained trademark protection for the design of its website for the corresponding services. We are forwarding you, for your immediate information, the register entries for trademarks no. 306 63 270 and no. 306 63 271. The German Patent and Trademark Office has thus approved, contrary to your explanations in your letter from 06/21/2006, the suitability of this design as an indication of origin for the corresponding services and has consequentially registered the trademark. The services are identical and your client's website is highly similar to the registered design marks with the consequence that likelihood of confusion as defined by § 14 para. 2 no. 2 of the Trademark Act exists.

With regard to trademark no. 306 63 270, the design of your client's website is similar to that effect that two lines are also present in identical size at the top, whereby the upper line is kept a darker color than the lower line. This design element was imitated by your client. In terms of trademark no. 306 63 271, additional similarity exists to that effect that the menu buttons are arranged at the lower end of the box and two lines on the left side with the menu buttons are below that.

As is well known, the question of whether the likelihood of confusion exists is a legal question, and alone the possibility suffices to substantiate a cease-and-desist claim. Actual confusion as presented herein proves likelihood of confusion in any case and the design of your client's website is so similar that many users erroneously assume that StudiVZ is the German version of Facebook.

As a result, the current design infringes on our client's trademark right, since it evokes likelihood of confusion. Consequently, your client, from a trademark aspect, is obligated to deliver a cease-and-desist declaration with a penalty clause with regard to the current design and to change the appearance of the website in such a way that the likelihood of confusion is eliminated.

## 2. Unfair Competition

In addition, our client's cease-and-desist claims exist in accordance with §§ 4 No. 9 a), 3, 8 para. 1 of the Unfair Competition Act. Through the imitation of the design, your client brings about a preventable deception of the consumers with regards to the operational origin. We are referring to the enclosed annexes and our above layout, which prove that numerous users actually assume that a business relationship exists between your client and our client. In your reply to the warning letter you had remarked that no competition exists between the parties, since our client exclusively has members in the USA and your client has members exclusively in Germany. This assumption is false. Our client has German members and members who study at German universities; therefore, competition does exist between the parties.

## 3. Copyright Claims

The design of our client's website is a personal and intellectual creation in terms of § 2 of the German Copyright Act. The design with the structure and layout of the menu buttons and the lines is imaginative, and at the same time this design is very precise and clearly arranged as the result of individual creative activity. The fact that this design was copied by your client and also by other competitors is the best proof that it presents a very successful, creative creation. You had explained in your letter from 06/21/2006 that the design represents a

common web design and is not capable of being copyright protected. This statement is evidently based on the false assumption that a very precise, clear, attractively “reduced” design could not benefit from copyright protection. This assumption is incorrect. Legal precedent emphasizes repeatedly that exactly the harmony between the design and the functional requirements can form the basis of creative achievement. This legal precedent accommodates the fact that it is much harder to create a “reduced” and at the same time attractive design than to develop a design with additional ornamental elements. In light of this legal precedent, the following design elements in particular, in their combination as a whole, lead to the conclusion that the design as a whole represents a personal intellectual creation:

- The upper line at the top of the website has a darker color with the trademark FACEBOOK and the buttons for log-in, register and help.
- Below that appears a line in a lighter color with the slogan “Welcome to FACEBOOK.”
- On the left side is the log-in button in the dark color of the upper line, and in addition there are the e-mail and password boxes.
- The buttons regarding About, Block, Developers, Job, etc. are positioned in the lighter color of the lower line at the bottom of the page.

We, as an example, point out that the competitor Unisocial.org, after a complaint filed by our client, changed its web design in order to preclude confusion and in order to avoid copyright infringement.

#### 4. Design Patent Protection

Finally, our client's design enjoys the protection of the unregistered community design in accordance with article 11 of EU Act No. 6/2002. The design of our client's website is new and unique based on the design characteristics described above. The design of your client's website does not lead to a different overall impression for the informed user and is included in the scope of protection of our client's unregistered

community design.

We request that your client cease the use of the current design and deliver the attached cease-and-desist declaration with penalty clause by

**01/09/2007 (detailed here)**

Our client reserves all rights, in particular to claims for compensation. Your client must be aware that these claims for compensation could reach a substantial amount in light of the success of our client's website.

In conclusion, we are furthermore pointing out that your client apparently has also infringed on the confidentiality agreement with our client with regards to the proceedings and apparently made the information subject to confidentiality available to other negotiating parties. In this respect our client also reserves the right to all claims for compensation as a result of infringements on the confidentiality agreement.

Yours sincerely,  
[signature]  
Dr. Stolz  
Attorney

## **Cease-and-Desist Declaration**

StudiVZ Limited, Saarbrücker Str. 38, 10405 Berlin

is herewith obligated

with respect to

Facebook, Inc., 156 University Avenue, Palo Alto, CA 94301, USA

in order to avoid a contract penalty in the amount of

**EUR 5,500**

for each individual case of noncompliance, to refrain from

the provision and/or operation of online discussion forums for registered users and/or  
using or allowing the use of the enclosed website design for access to online discussion  
forums.

Date: \_\_\_\_\_

\_\_\_\_\_  
StudiVZ Limited